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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/088,467 | 06/24/2002 | Kenneth D. Tew | FCCC.99-08US | 8802 |

110 7590 07/19/2004

DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

EXAMINER

NICHOLS, CHRISTOPHER J

ART UNIT PAPER NUMBER

1647

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|---|---------------------|
| 10/088467 | 6/24/04 | TEW | FCCC.99-08US |

EXAMINER

Christopher James Nichols

| ART UNIT | PAPER |
|----------|-------|
|----------|-------|

1647

DATE MAILED:

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Commissioner of Patents

See attached documents.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I (claims 1-4, 6, 7, and 11-16) in the reply filed on 25 June 2004 is acknowledged. The traversal is on the ground(s) that the restriction requirement is improper for failure to comply with the terms of 35 U.S.C. §371 for the following reasons: **(a)** no Lack of Unity was established in the international stage of the instant application, **(b)** the Examiner improperly applied the rules of Lack of Unity, **(c)** all components of an independent claim must be examined together, and **(d)** all the products for the six groups are the same. This is not found persuasive because the International Search Report, Written Opinion, and International Preliminary Examination Report are all considered advisory actions and have no bearing on the prosecution of the application once it enters the national stage. Further, all six groups as set forth in the previous Office Action (25 March 2004) do not share a special technical feature. Also, restriction (as well as Lack of Unity) is between inventions not claims. The six groups all differ in their classification, their search fields, and their special technical features. As such restriction between the six groups is considered proper and is hereby maintained. Claims **5, 8-10, and 17-25** are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 June 2004. The requirement is still deemed proper and is therefore made FINAL.

Sequence Rules

2. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth herein. As such, an examination on the merits will be prepared once the above requirements are fulfilled.

3. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R. § 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 C.F.R. §§ 1.821-1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. Applicant must comply with the requirements of the sequence rules (37 CFR 1.821 - 1.825) before the application can be examined under 35 U.S.C. §§ 131 and 132.

4. APPLICANT IS GIVEN ONE MONTH FROM THE DATE OF THIS LETTER WITHIN WHICH TO COMPLY WITH THE SEQUENCE RULES, 37 C.F.R.. §§ 1.821-1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 C.F.R. § 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 C.F.R. § 1.136. In no case may an applicant extend the period for response beyond the six month statutory period. Direct the response to the undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the response.

HOW TO SEND SEQUENCES TO USPTO

Art Unit: 1647

The addresses below are effective 5 June 2004. Please direct all replies to the United States Patent and Trademark Office via one (1) of the following:

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3. Hand Carried directly to the Customer Window at:
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Arlington, VA 22202
4. Mailed by Federal Express, United Parcel Service or other delivery
service to:
U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Art Unit: 1647


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher James Nichols, Ph.D.** whose telephone number is **(571) 272-0889**. The examiner can normally be reached on Monday through Friday, 8:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Brenda Brumback** can be reached on **(571) 272-0961**.

The fax number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

CJN
July 9, 2004


BRENDA BRUMBACK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1800

| | | | |
|-------------------------|------------------------------|---------------------|--|
| Notice to Comply | Application No. 10/088467 | Applicant(s) TEW | |
| | Examiner NICHOLS | Art Unit 1647 | |

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

Applicant must file the items indicated below within the time period set the Office action to which the Notice is attached to avoid abandonment under 35 U.S.C. § 133 (extensions of time may be obtained under the provisions of 37 CFR 1.136(a)).

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

☒ 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998).

☐ 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).

☐ 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).

☐ 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."

☐ 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).

☐ 6. The paper copy of the "Sequence Listing" is not the same as the computer readable from of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).

☐ 7. Other:

Applicant Must Provide:

☒ An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".

☒ An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.

☒ A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216 or (703) 308-2923

For CRF Submission Help, call (703) 308-4212 or 308-2923

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